

SEP 04 2013

John A. Clarke, Executive Officer/Clerk
By Amber Hayes, Deputy

1 LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
2 1467 South Holt Avenue #2
Los Angeles, CA 90035
3 Telephone: (310) 200-2631
Facsimile: (818) 788-3847
4 Email: danielgreenbaumesq@gmail.com

5 Attorney for SHEFA LMV, LLC

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF LOS ANGELES

8 CENTRAL DISTRICT

9 SHEFA LMV, LLC, a California limited liability company,) Unlimited Jurisdiction
10)

11 Plaintiff,

) CASE NO. BC520416

12 vs.

13) COMPLAINT FOR CIVIL
14 WALGREENS HOME CARE, INC., an Illinois corporation; ULTIMARK PRODUCTS, LLC, a) PENALTY AND INJUNCTIVE
15 Pennsylvania limited liability company; LAKE) RELIEF

16 CONSUMER PRODUCTS, INC., a Wisconsin corporation; and DOES 1 through 25, inclusive,) (Health and Safety Code § 25249.5 et seq.)

17 Defendants.)
18)
19)
20)

TOXIC TORT/ENVIRONMENTAL

21
22 Plaintiff SHEFA LMV, LLC, hereby alleges:
23

24 I. PRELIMINARY STATEMENT

25 1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure to
26 Diethanolamine, which is a chemical known to the State of California to cause cancer.

27 2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
28 Code section 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear

1 and reasonable warning” before exposing individuals to chemicals known to the state to cause cancer or
2 reproductive harm.

3 II. PARTIES

4 3. Plaintiff is made up of citizens of the State of California, by and through its counsel of
5 record, the Law Office of Daniel N. Greenbaum.

6 4. Health and Safety Code section 25249.7(d) provides that actions to enforce Proposition 65
7 may be brought by “any person in the public interest.”

8 5. Defendant WALGREENS HOME CARE, INC. (hereinafter “Walgreens”) is a business
9 entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the
10 manufacture, distribution, or sale of soap and shampoo products under the brand name “Walgreens” and
11 “Nice!” and other brand names, that contain Coconut oil diethanolamine condensate (cocamide
12 diethanolamine) or Diethanolamine, for sale within the State of California, without first giving clear and
13 reasonable warning.

14 6. Defendant ULTIMARK PRODUCTS, LLC (hereinafter “Ultimark”) is a business entity
15 with ten or more employees that sells, or has, at times relevant to this complaint, authorized the
16 manufacture, distribution, or sale of soap and shampoo products under the brand name “Prell” and other
17 brand names, that contain Coconut oil diethanolamine condensate (cocamide diethanolamine) or
18 Diethanolamine, for sale within the State of California, without first giving clear and reasonable warning.

19 7. Defendant LAKE CONSUMER PRODUCTS, INC. (hereinafter “Lake Consumer”) is a
20 business entity with ten or more employees that sells, or has, at times relevant to this complaint,
21 authorized the manufacture, distribution, or sale of soap and shampoo products under the brand name
22 “MG217” and other brand names, that contain Coconut oil diethanolamine condensate (cocamide
23 diethanolamine) or Diethanolamine, for sale within the State of California, without first giving clear and
24 reasonable warning.

25 8. The identities of DOES 1 through 25 are unknown to Plaintiff at this time; however,
26 Plaintiff suspects that they are business entities with at least ten or more employees that have sold,
27 authorized the distribution, or sale of soap and shampoo products under the brand name Walgreens and
28

1 other brand names, that contain Coconut oil diethanolamine condensate (cocamide diethanolamine) or
2 Diethanolamine, for sale within the State of California, without first giving clear and reasonable warning.

3 **III. JURISDICTION AND VENUE**

4 9. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,
5 because this case is a cause not given by statute to other trial courts.

6 10. This Court has jurisdiction over Defendants, because they are business entities that do
7 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
8 themselves of the California market, through the sale, marketing, and use of its products in California, to
9 render the exercise of jurisdiction over it by the California courts consistent with traditional notions of
10 fair play and substantial justice.

11 11. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles
12 County because Defendant's products are sold and consumed in this county.

13 **IV. STATUTORY BACKGROUND**

14 **A. Proposition 65**

15 12. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
16 passed as "Proposition 65" by a vote of the people in November of 1986.

17 13. The warning requirement of Proposition 65 is contained in Health and Safety Code section
18 25249.6, which provides:

19 No person in the course of doing business shall knowingly and intentionally
20 expose any individual to a chemical known to the state to cause cancer or
21 reproductive toxicity without first giving clear and reasonable warning to such
22 individual, except as provided in Section 25249.10.

23 14. An exposure to a chemical in a consumer product is one "which results from a person's
24 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or
25 any exposure that results from receiving a consumer service." (Cal. Code Regs., tit. 22, § 12601, subd.
26 (b).)

27 15. Proposition 65 establishes a procedure by which the state is to develop a list of chemicals
28 "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, § 25249.8.)

1 27. The products are sold to consumers under the trade names owned by the Defendants for
2 their various brands, including those mentioned above, and using the associated trademarks and trade
3 dress for those brands, including the distinctive retailer labels.

4 28. The process followed in manufacturing the products for sale to the consuming public must
5 be approved by Defendants used by individuals for personal use.

6 29. Individuals who purchase and use Defendants' products are exposed to Coconut oil
7 diethanolamine condensate (cocamide diethanolamine) or Diethanolamine ("DEA") chiefly through: (1)
8 contact between the soap or shampoo and the skin, (2) transfer of DEA from the skin to the mouth, both
9 by transfer directly from the hand to mouth and by transfer of the DEA from the skin to objects that are
10 put in the mouth, such as food and (3) through absorption of DEA through the skin.

11 30. Such individuals are thus exposed to the DEA that is present on and in Defendants'
12 products in the course of the intended and reasonably foreseeable use of those products.

13 31. At all times material to this complaint, Defendants had knowledge that the soaps or
14 shampoos contain DEA and that skin may come into contact with DEA.

15 32. At all times material to this complaint, Defendants have had knowledge that individuals
16 within the State of California handle Defendants' products that contain DEA.

17 33. At all times material to this complaint, Defendants knew that the Defendants' products
18 were sold throughout the State of California in large numbers, and Defendants profited from such sales
19 through, among other things, the sale of Defendants' products that were sold in California.

20 34. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized the
21 sale of Defendants' products that contained DEA.

22 35. At all times material to this complaint, Defendants have knowingly and intentionally
23 exposed individuals within the State of California to DEA.

24 36. The exposure is knowing and intentional because it is the result of the Defendants'
25 deliberate act of authorizing the sale of products known to contain DEA in a manner whereby these
26 products were, and would inevitably be, sold to consumers within the state of California, and with the
27 knowledge that the intended use of these products will result in exposures to DEA within the State of
28 California.

1 37. Defendant has failed to provide clear and reasonable warnings that the use of the products
2 in question in California results in exposure to a chemical known to the State of California to cause
3 cancer, and no such warning was provided to those individuals by any other person.

4 **VI. FIRST CAUSE OF ACTION**

5 (Against All Defendants for Violation of Proposition 65)

6 38. Paragraphs 1 through 39 are re-alleged as if fully set forth herein.

7 39. By committing the acts alleged above, Defendants have, in the course of doing business,
8 knowingly and intentionally exposed individuals in California to chemicals known to the State of
9 California to cause cancer without first giving clear and reasonable warning to such individuals, within
10 the meaning of Health and Safety Code section 25249.6.

11 40. Said violations render Defendant liable to Plaintiffs for civil penalties not to exceed
12 \$2,500 per day for each violation, as well as other remedies, such as injunctive relief requiring
13 reformulation of the products.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray that the Court:

- 16 1. Pursuant to the First Cause of Action, grant civil penalties according to proof;
17 2. Pursuant to Health and Safety Code section 25249.7, enter such temporary restraining
18 orders, preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant
19 from exposing persons within the State of California to Listed Chemicals caused by the use of
20 their products without providing clear and reasonable warnings, as Plaintiffs shall specify in
21 further application to the court;
22 3. Award Plaintiffs their costs of suit;
23 4. Grant such other and further relief as the court deems just and proper.

24
25 Respectfully submitted,

26 DATED: September 4, 2013

27
28 

By: DANIEL N. GREENBAUM

Attorney for Plaintiff
Shefa LMV, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28